Author: Doris Nieto attorney in Alcogal

Arbitration in Panama

Arbitration dates back to 1975, when the Inter-American Convention on International Commercial Arbitration was held in Panama. A few years later, Panama became a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and subsequently to the 1965 Washington Convention through Law No. 13 of January 1996.

However, it was not until the issuance of Decree-Law No. 5 of July 8, 1999, that local and international arbitration was regulated for the first time in a comprehensive manner in Panama. In the first years of the entry into force of Decree-Law No. 5 of 8 July 1999, there were setbacks since the Courts of Justice did not recognize the actions of arbitrators. Even the Plenary of the Supreme Court of Justice declared unconstitutional the Arbitral Tribunal's authority to decide on its own competence and on the validity of the arbitration agreement (the kompetez-kompetez principle), which is one of the fundamental principles of arbitration. Fortunately, through the reform of the Political Constitution of the Republic of Panama in 2004, arbitration was elevated to constitutional status, and the authority of the Arbitral Courts to rule of its competence was recognized.

Subsequently, the rules are improved and updated through Law No. 131 of December 31, 2013, which "Regulates National and International Commercial Arbitration in Panama" (from now on, the Panama Arbitration Law), including provisions that raise them to international standards.

Arbitration is presented as an alternative to resolve disputes effectively and more expeditiously compared to the traditional legal systems of the Courts.

According to Panama Arbitration Law, any person with the legal capacity to be bound submits disputes arising or which may occur with another person to the judgment of one or more arbitrators, who decide definitively by means of an award with res judicata effect, accordance with the provisions of the Law.

This same law refers to the arbitration agreement as the agreement whereby the parties decide to submit to arbitration all disputes or certain disputes that have arisen or may arise between them in respect of a particular legal relationship, either contractual or non-contractual.

The arbitration agreement may take the form of an arbitration clause included in the contract or a separate agreement. To be valid, the Law provides that the arbitration agreement must be in writing, even in cases where the agreement has been concluded orally, through the performance of certain acts, or by any other means.

Among the main advantages of arbitration over ordinary justice, we find:

- In arbitration, the arbitrators who will settle the dispute can be chosen, considering their experience and suitability. This is especially relevant when it comes to complex conflicts of high technical content since it presents the opportunity for arbitral tribunals to be made up of expert professionals with extensive proven experience in resolving the conflict.

- Arbitration is governed, among others, by the principles of immediacy and flexibility manifested in the arbitration process through less formalistic actions, which translates into a greater celerity of the entire process compared to that of ordinary justice.

- The arbitral award resolves the dispute definitively using a decision that gives executive merit and becomes res judicata since it can only be challenged by an appeal for annulment based on specific grounds.

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